REMARKS

The foregoing amendments and following comments are responsive to the Office Action mailed April 12, 2010. A shortened statutory period for responding to that Office Action expired on July 12, 2010. The statutory period for responding to that Office Action expired on October 12, 2010. Accordingly, Applicant believes that this application has gone abandoned for failure to timely reply to the 4/12/10 Office Action. However, the failure to timely respond was unintentional and a petition to revive for unintentional abandonment, as well as the corresponding fee, are being filed concurrently herewith. Applicant therefore requests consideration of the foregoing amendments and following comments.

In the office action of 4/12/2010, Claim 1 was rejected as being unpatentable over Gifford et al. under 35 U.S.C. 103(a). Before addressing this issue, it should be pointed out that the device of Gifford et al. is intended for use in treating cerebral aneurysms whereas the device of the present application is intended for use in the treatment of a hernia, in particular an abdominal hernia. This has been explicitly set forth in claim 1 by the amendment made herein that added the language "adapted for use in repairing hernias." To a person skilled in the art, namely a surgeon, the fields of aneurysms and hernias are entirely remote from one another and the skilled person would not therefore consult Gifford et al. in seeking to arrive at the invention as recited in Claim 1 of the present application. The device of Gifford et al. is orders of magnitude smaller than the device of the present invention, with the implant 4B of Gifford et al. required to be inserted through the vascular system of a patient in order to be directed to the site of the aneurysm being treated. As a result the implant 4B would not be considered, by a person skilled in the art, to be suitable for use in hernia repair as the implant 4B would not have the strength or size necessary to retract and retain a hernia.

It is thus respectfully submitted that Gifford et al. is in a different technical field to the present invention, and should not be used as a prior art document for the purposes of assessing obviousness.

The subject matter of claim 1 is also not obvious in light of Gifford reference for several additional reasons. The Examiner concedes that Gifford et al. fails to explicitly disclose an abutment as required by Claim 1 of the present application. The Examiner is however of the

opinion that it would have been obvious to one of ordinary skill in the art to form a blunt abutment on the end of shaft 110 in order to press the hub forward and cause expansion of the mesh. The Examiner states that it would additionally have been obvious to "provide disc 144 to the end of 110 and integral with the abutment in order to seal off the neck of the aneurysm... with this modification the mesh would be seated against the abutment once separated from the shaft which would at least partially secure the mesh in place". It appears that the Examiner is using hindsight in selecting various features from different embodiments of Gifford et al. in order to arrive at the claimed invention, without there being any incentive to the skilled person to actually combine the features as the Examiner suggests. For example, the embodiment shown in Figures 21 to 23 of Gifford et al. employs a locking mechanism 124 which secures the implant 4B in the expanded state and which is located at the free end of the shaft 122. As the shaft 122 does not extend beyond this point there is no requirement to cut the free end of the shaft as in the device of the present invention. Thus there is clearly no requirement in said embodiment of Gifford et al. to provide a further covering/abutment which in the present invention secures the mesh in position and occludes the free end of the shaft in order to prevent discomfort by distributing the pressure exerted by the cut end of the shaft. With the device of Gifford et al., once the implant is displaced into the expanded state it is self-retaining due to the restricted neck of the aneurysm, and so the skilled person would not seek a further means of retaining the mesh in position. Nowhere in Gifford et al. is the disc 144 disclosed as being used to retain the implant in position. The disk 144 is purely to retain injected fluid within the aneurysm. Thus there is no incentive for the skilled person to think of using the disc 144 as an abutment and to place same over the locking mechanism 124 as the Examiner is suggesting.

Indeed the disc 144 forms an integral part of the delivery catheter 140 and provides "temporary isolation" (Paragraph 91) to the aneurysm. The delivery catheter 140 remains in position while RF energy is applied to the aneurysm through the electrodes 146, 150. Once the aneurysm has been heated and shrunk the delivery catheter 140 and therefore the integrated disk/cover 144, is removed. Referring to paragraph 91 of Gifford et al., and Figures 26 and 27, it is clear that the disk 144 is located "over the neck of the aneurysm" and is simply pressed against the opening in the wall of the vein/artery in which the neck is formed. Thus if the delivery

catheter 140 were removed such as to leave only the disc 144 in position, the disc 144 would simply dislodge from the wall of the vein/artery and could not therefore be used to secure the implant in position. Clearly therefore Gifford et al. does not teach towards the use of the disc 144 as an abutment for securing the mesh/implant in position, as is the case in the present application.

Finally, the Examiner also goes on to state that "the abutment has a recess (formed by the cup shape of the disc – Figure 26) within which a cut end of the shaft may/could be seated, such that the abutment covers the cut end of the shaft and distributes the pressure exerted by the cut end of the shaft". It is however respectfully submitted that the Examiner's interpretation is incorrect. As the disc 44 is located on the delivery catheter 140, which itself defines a lumen 142 internally thereof, the disc 140 must also have a central aperture (not visible) therein. Thus if one were to attempt to use the disk 144 as an abutment into which the free end of a cut shaft was to be seated, the free end of the cut shaft would simply pass through the aperture in the disc 144, thus rendering the disk 144 useless as an abutment. This is a further indication that Gifford et al. does not render obvious the subject matter of the present application as defined in Claim 1.

In light of the above, claim 1 should be in a condition for allowance. All of the remaining claims should also be in a condition for allowance due to their dependency upon claim 1.

Respectfully submitted,

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